approximately 2,600 buildings used to confine hogs and other livestock, mostly in Minnesota and Iowa. Pet. App. 7a.

The construction of confinement buildings is a significant matter for the hog farmers who buy Lester's products, because the cost of constructing such buildings ranges from several hundred thousand to several million dollars. Farmers often take out loans to finance the buildings and justifiably expect Lester to provide a durable, sound product. For the decades that Lester used plywood as the exterior siding, farmers' expectations were met. When Lester switched from plywood to L-P's Inner-Seal, however, its buildings began to fail. Inner-Seal rotted and failed on hog buildings because it could not withstand moisture. Inner-Seal was defective and not fit for use, and L-P knew it.

When Inner-Seal failures on Lester® buildings began to surface, L-P initially honored its warranty obligations to Lester. In September 1998, however, L-P abruptly stopped honoring its warranty obligations, even though the siding was continuing to fail. L-P left Lester to deal with its customers' complaints. At L-P's suggestion, Lester notified its customers that they should seek recovery for any injuries through a class action settlement that L-P had entered into in federal court in Oregon (the "Inner-Seal Settlement"). The Inner-Seal Settlement, however, did not solve Lester's problems with its customers or mitigate its losses; in fact, it made them worse. As discussed further in Section C of this Statement of the Case, the Inner-Seal Settlement, while providing class counsel with more than $26 million in fees and costs for four months of litigation, ultimately reimbursed most owners of defective Inner-Seal only 30% of the amount necessary to repair the siding. As a result of selling thousands of buildings with defective siding, Lester's once-fine reputation was sullied and its sales devastated. Lester's customers refused to consider buying additional Lester buildings unless and until Lester repaired those it had sold with Inner-Seal.

Between 1999 and 2002, the situation grew worse. Inner-Seal failed everywhere; Lester's customers were justifiably angry; L-P refused to help; and the customers' barns were not being repaired. The hog industry is tightly-knit, and it is a "repeat customer" business. Farmers buy one building, and, if satisfied, return to the same supplier the next time. Because Lester had sold its former customers buildings with defective siding, people who had been regular customers for decades switched to Lester's competitors. Many of Lester's customers are farmers with two or three older Lester buildings made with plywood (functioning well), a fourth building with Inner-Seal (rotting), and the fifth and latest building manufactured by a Lester competitor.

B. The Minnesota Lawsuit And Jury Verdict In Favor Of Lester.

After L-P abruptly ended a repair program for Lester's customers' buildings, Lester was forced to file suit in May 2000 against L-P in Minnesota state court. *Lester Building Sys. v. Louisiana-Pacific Corp.*, No. 43-C6-00-000335 (McLeod County Dist. Ct.). In its Complaint, Lester asserted claims for breach of express and implied warranties, breach of contract, and fraud. L-P filed an Answer (and later an Amended Answer) in which it raised the Inner-Seal Settlement as an affirmative defense.

After two-and-a-half years of litigation, the case was tried to a jury in the fall of 2002. The presiding judge was the Honorable LeRoy W. Yost, who served on the state bench for more than 30 years until his death in December 2003. Lester and L-P presented evidence from 30 witnesses, including farmers, builders, executives, and experts, and introduced more than 300 exhibits. One of the witnesses called by L-P was Richard Unis, the Special Master appointed to oversee the Inner-Seal Settlement in the federal district court. Pet. App. 10a. After the close of testimony, the Minnesota court instructed the jury on the law. In particular, the court in-

structed the jury regarding L-P's affirmative defense that the class action settlement precluded Lester from recovering for some of its claimed damages. Pet. App. 10a-11a. On October 15, 2002, the jury returned a verdict in favor of Lester and against L-P in the amount of $29.6 million. The jury found that L-P breached express and implied warranties, breached its contract, and defrauded Lester. Resp. App. 3a-4a.

Turning to damages, the jury filled out its special verdict form as follows:

> 8. What amount of money will fairly and adequately compensate Lester?
>
> | | |
> |---|---|
> | Cost of Inner-Seal: | $ 3.4 million |
> | Cost to Repair Buildings: (those not barred by the class action) | $13.2 million |
> | Lost Profits: | $10.2 million |
> | Cost to Restore Goodwill: | $ 2.8 million |
> | TOTAL: | $29.6 million |
>
> 9. Without regard to the class action, what is the total amount of money that would fairly and adequately compensate Lester for the Cost to Repair Buildings (both those in and out of the class action)? $13.2 million.

Pet. App. 11a n.7; Resp. App. 4a.[1]

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[1] As noted above, L-P argued in Minnesota that the class action settlement was an affirmative defense to a portion of Lester's claim for costs to repair buildings. That affirmative defense failed for at least two reasons. First, Lester was not a class member, and the settlement did not release or bar Lester's own claims for costs to repair. Second, L-P did not present credible evidence to the jury to support the defense. The purported effect of the class action settlement as a limit on Lester's damages was a matter for which L-P had the burden of proof. At trial L-P made the strategic choice not to prove, *inter alia*, which Lester customers were class members, but instead to argue that, by settling the class action, L-P had "hon-

On October 24, 2002, the Minnesota trial judge signed and filed Findings of Fact, Conclusions of Law, and Order for Judgment based on the jury verdict. Under the Minnesota rules of court, the trial judge entered an automatic Stay of Entry of Judgment for thirty (30) days. Pet. App. 12a; Resp. App. 1a. Such a stay allows resolution of post-trial motions without the need to reopen an entered judgment if relief is granted. *See* Minn. R. Civ. P. 58.01 cmt., Minn. R. Civ. P. 58.02.

C. The District Court Enjoins The Minnesota State Court From Entering Judgment In Favor Of Lester On Its Damages For The Cost To Repair.

On November 6, 2002, during the 30-day stay in the Minnesota action, L-P moved in federal court in Oregon to enjoin entry of judgment on a portion of the Minnesota jury verdict. L-P argued that, notwithstanding the jury's verdict, the Inner-Seal Settlement barred a portion of the damages awarded to Lester for the cost to repair buildings.

As noted above, the Inner-Seal Settlement resolved certain claims regarding defective siding that were alleged by consumers in a national class action filed in the district court in 1995. The class consisted of all persons who had owned or acquired a building on which Inner-Seal siding was installed before January 1, 1996. Pet. App. 4a. Although the original complaint stated no federal question, class plaintiffs filed an Amended Complaint on September 27, 1995, adding a (highly dubious) federal claim under the RICO statute, 18 U.S.C. § 1961 *et seq.* On October 13, 1995, L-P answered Plaintiffs' Amended Complaint and five days after that, on October 18, 1995, the case settled. That same day, the district court granted the joint motion of class plaintiffs and L-P

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ored" its warranties to Lester and owed Lester nothing. This "all-or-nothing" strategy did not work and left the record bereft of credible evidence supporting L-P's defense.

for preliminary approval of the class action settlement and granted L-P and class counsel's "stipulated" motion for the intervention by another group of class plaintiffs asserting only state law claims.

On November 14, 1995, the district court approved notice to the class, and on April 26, 1996, the district court entered an Order, Final Judgment, and Decree approving the settlement. Under the terms of the settlement as ultimately approved, L-P agreed to pay at least $275 million over a seven-year period to resolve the claims of building owners concerning failing Inner-Seal, and agreed to pay class counsel fees of $26.25 million (although only four months had elapsed between the filing and settlement of the federal action). On June 12, 1996, the district court issued an order appointing Richard Unis as a Special Master to oversee the Inner-Seal Settlement procedure.

The plaintiff class was defined as "[a]ll persons who have owned, own, or subsequently acquire Property on which Exterior Inner-Seal Siding has been installed prior to January 1, 1996." It is undisputed that Lester is not a member of the plaintiff class and was not a party to the class action. Pet. App. 7a. The Inner-Seal Settlement does not purport to bar or release Lester's claims against L-P.[2] Although the settlement provided no compensation whatsoever to Lester, L-P none-

[2] The Inner-Seal Settlement does not apply to or bar the following: (1) claims of nonperformance that occur after January 1, 2003; (2) claims involving Inner-Seal on buildings constructed after January 1, 1996, regardless of when the claims arise; (3) claims by dealers, builders, and erectors (who are not class members) for damages of any kind, including lost profits, money for out-of-pocket repairs, and other costs; (4) claims by class members who have opted out of the settlement; (5) claims by class members who proceed through the class action arbitration mechanism and as to whom L-P defends on the basis of alleged improper use or installation of Inner-Seal by the builder; and (6) claims involving personal injuries as a result of Inner-Seal failures.

theless argued that release language contained in the Inner-Seal Settlement barred Lester from recovering $14.6 million of the jury verdict—$11.2 million (of the $13.2 million awarded) for the cost to repair failing Inner-Seal, and an additional $3.4 million, which represents the difference between what Lester paid for the siding and its actual value. Pet. App. 90a. L-P sought its injunction in federal court even though its lead Minnesota trial counsel, as well as the Special Master appointed by the district court who testified on behalf of L-P, stated in Minnesota that the federal district court did not have jurisdiction over Lester.

Despite these admissions, and over a multitude of objections by Lester, on December 13, 2002, after a one-hour hearing, the district court held it had "retained" jurisdiction from the original action to preclude the claims of Lester (a non-party) and permanently enjoined the Minnesota state court from entering judgment on $11.2 million of the jury verdict in Lester's favor. Pet. App. 12a & n.9, 91a. The pervasive concern underlying the district court's decision was the court's view that "the judge in Minnesota . . . did wrong." Pet. App. 13a n.10.

Lester had argued in Minnesota, and the trial court there agreed, that Lester had its own claim for damages to repair buildings that was independent of any claim the end customer might have against L-P. Pet. App. 31a. The district court rejected the Minnesota trial court's interpretation of Minnesota law, Pet. App. 83a, and declared that "the Minnesota state court was wrong to submit Lester's damages claim for repair costs [allegedly] covered by the class action settlement to the jury for consideration." Pet. App. 87a. The court held that the injunction requested by L-P was "necessary both in aid of [the district court's] jurisdiction and to protect and effectuate [the district court's] Order, Final Judgment and Decree" approving the Inner-Seal Settlement. On that basis,

the court held that its injunction was not barred by the Anti-Injunction Act, 28 U.S.C. § 2283. Pet. App. 88a.

D. Lester Prevails On Post-Trial Motions And On Appeal In Minnesota.

Before the district court issued the injunction, L-P had filed post-trial motions for judgment notwithstanding the verdict and a new trial in the Minnesota court. In its motions, L-P argued, *inter alia*, that it had proved that a portion of the jury verdict was barred by the Inner-Seal Settlement. On January 17, 2003, a month after the district court issued its injunction, the Minnesota court denied L-P's post-trial motions in their entirety. Thereafter, on January 27, 2003, the Minnesota court issued a revised Order for Judgment stating that Lester was entitled to the full amount of the jury verdict, plus interest: "Plaintiffs [Lester] are entitled to Judgment against defendant [L-P] in the amount of $31,375,862.21." Resp. App. 2a.

The Minnesota court's Order continued:

> [T]he United States District Court for the District of Oregon has issued a permanent injunction enjoining "the Minnesota state court from entering judgment" on "the sum of $11.2 million" of the jury verdict. That injunction is now on appeal. Accordingly, Judgment shall now be entered in favor of plaintiffs and against defendant in the amount of $20,074,424.21 ($31,375,862.21 minus $11,200,000 of the verdict and $101,438 of interest per the injunction), but in the event the injunction is vacated, reversed or lifted, the Judgment herein shall be deemed to be in the full amount of $31,375,862.21 *nunc pro tunc*.

Resp. App. 2a. That same day, the Judgment was docketed by the court administrator in the Minnesota trial court.

L-P appealed to the Minnesota Court of Appeals. Among the issues raised on appeal was whether the court or jury

erred in assessing the effect of the Inner-Seal Settlement on Lester's damages. On February 10, 2004, the Minnesota Court of Appeals affirmed the trial court's denial of L-P's post-trial motions, but declined to rule on the $11.2 million portion of the jury award for repair costs as to which the federal court had enjoined the entry of judgment. Resp. App. 17a-18a. The court affirmed the jury verdict on Lester's fraud claims and held that the economic loss doctrine did not preclude Lester from recovering damages for L-P's fraud and misrepresentation. Resp. App. 12a-17a. The court further held that, as to the $11.2 million in repair costs for which judgment was not entered because of the district court's injunction, L-P was not aggrieved by that portion of the jury award. Pet. App. 15a; Resp. App. 17a. The court stated that "[i]f the [district court's] injunction is reversed, the trial court would amend the current judgment to enter the $11.2 million portion for repair costs, and L-P may appeal from the amended judgment at that point." Resp. App. 18a. The Minnesota Supreme Court denied further review. Resp. App. 22a.

E. The Court Of Appeals Corrects The District Court's Error And Vacates The Injunction.

On appeal of the district court's injunction, the court of appeals reversed. Pet. App. 1a-69a. The court held that the order enjoining entry of judgment on Lester's state law claims violated the Anti-Injunction Act. Lester also asserted numerous other grounds for reversal, including the following: (1) the "retained jurisdiction" provision of the settlement agreement did not create subject matter jurisdiction to adjudicate a portion of Lester's claims for damages; (2) the district court lacked personal jurisdiction over Lester; (3) Lester's rights under the Due Process Clause were violated; (4) the Full Faith and Credit statute, 28 U.S.C. § 1738, required the district court to give effect to the Minnesota verdict and Order for Judgment; (5) federal equity principles precluded relief

in favor of L-P because L-P could and did seek relief in Minnesota; (6) the district court's injunction violated principles of comity and state sovereign immunity; (7) the *Rooker-Feldman* doctrine prevented the district court from reviewing the Minnesota state court decisions; and (8) the record did not support the district court's ruling. Pet. App. 15a-18a. The court of appeals rejected the subject matter jurisdiction argument and any issue about the propriety of service of process. Pet. App. 15a & n.12. Otherwise, as a consequence of its ruling under the Anti-Injunction Act, the court did not reach Lester's other grounds for reversal. Pet. App. 18a & n.15.

The court of appeals began with the language of the Anti-Injunction Act, which precludes a federal court from enjoining "proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The court of appeals then carefully examined the latter two exceptions and correctly concluded that neither authorized the district court's injunction here.

The court ruled first that the "necessary in aid of jurisdiction" exception does not apply "because the state court action did not threaten the district court's jurisdiction over the Inner-Seal Siding litigation." Pet. App. 22a. The court properly recognized that the "necessary in aid of jurisdiction" exception applies "only when it is required to preserve the court's jurisdiction" and not simply when the state action involves the same subject matter that already is or was before the federal court. Pet. App. 23a. In this case, the court of appeals said, the federal class action was over, and the subsequent Minnesota state court action "could not have interfered with the district court's consideration or disposition of the class claims. Nor could it have interfered with the [district] court's continuing jurisdiction over the settlement." Pet. App. 22a (citation omitted). Specifically, the court observed that before Lester even initiated the Minnesota action, member-

ship in the Inner-Seal Settlement class was fixed and Lester was not a class member; the class action had been settled and payments were being made to class members out of the settlement fund; and Lester "did not seek to join or undo the class, contest the payment of funds to class members or make a claim on the settlement fund." Pet. App. 22a. In these circumstances, the court concluded, relying on this Court's decision in *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 295 (1970), "the state court action did not seriously impair the district court's flexibility and authority to decide the Inner-Seal Siding Litigation or enforce the settlement agreement," and an injunction therefore was not needed to preserve the court's jurisdiction. Pet. App. 23a.

Second, the court of appeals held that the "necessary to protect or effectuate its judgments" exception, also called the "relitigation exception," did not apply because Lester was not a party to the class action and therefore was "entitled to sue L-P in state court for its own injuries." Pet. App. 31a. Quoting this Court's decision in *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147-48 (1988), the court explained that "the relitigation exception is 'founded in the well-recognized concepts of *res judicata* and collateral estoppel,'" and the exception therefore is "'strict and narrow.'" Pet. App. 28a. The court correctly concluded that "the Minnesota lawsuit did not challenge the *res judicata* effect of the class settlement." Pet. App. 28a-29a.

Stressing the Minnesota trial court's ruling that under Minnesota law Lester has a claim to recover, *inter alia*, damages measured by Lester's cost to repair L-P's defective Inner-Seal siding, the court of appeals properly recognized that "Lester was not acting as a representative of its customers seeking to recover on [their] behalf" but that instead Lester's cost to repair claim is "entirely personal to Lester." Pet. App. 31a. This claim could not have been resolved in the class action

because Lester was not a party to the class action nor was it represented there. Lester therefore could not have had a full and fair opportunity to litigate its Minnesota state law claim in the class action. Pet. App. 31a.

In rejecting the district court's application of the relitigation exception, the court of appeals also emphasized the Minnesota trial court's jury instructions. Specifically, the Minnesota trial court instructed the jury (as L-P had advocated) that "Lester could not be awarded damages for injuries that were covered by the settlement." Pet. App. 32a. As the court of appeals stated, the issue of whether Lester had proved its personal claims for damages, or, conversely, whether L-P had proved that the Inner-Seal Settlement partially barred Lester's damages claim for repair costs, was a question of fact for the jury.

> It is not the province of the district court in Oregon to say that the trial court and jury in Minnesota were wrong in their respective determinations. The proper recourse for L-P was to appeal through the state court system and, if necessary, to petition the United States Supreme Court for review.

Pet. App. 33a. The district court's declaration that "Minnesota law did not permit Lester to recover the costs to repair" and that "the trial court had erred in submitting such a claim to the jury" was "tantamount to a judgment reversing a state court on a matter of state law." Pet. App. 34a. The court of appeals correctly concluded that "allowing L-P to lose on the merits in state court, yet run to federal court for an injunction just days before the state court decision achieved preclusive status, offends the very 'principles of equity, comity, and federalism' that undergird the Anti-Injunction Act." Pet. App. 35a; *see also* Pet. App. 38a (Silverman, J., concurring).

Judge Reinhardt dissented. His opinion disregards the nature of Lester's claim under Minnesota law, a claim personal to Lester for future costs that it would incur for repairs

needed to restore and preserve its business. Rather, the opinion proceeds from the erroneous assumption that the Minnesota jury awarded Lester damages that were barred by the Inner-Seal Settlement. Pet. App. 44a. Indeed, the dissent declares that the nature of Lester's claim for the cost to repair damages under Minnesota law is "inconsequential to the question we must decide—whether the jury's award is inconsistent with the settlement agreement." Pet. App. 52a. As the majority correctly observed in response,

> If we are to take seriously the rule that we do not sit in review of state court determinations, we must accept that Lester was not acting as a representative of its customers or as a conduit funneling money to its customers. We must accept that Lester was acting as a business, injured by L-P and seeking to be made whole through its own claims for its own future damages, and that its damages were proven to the satisfaction of the jury.

Pet. App. 34a n.28 (citation omitted).

ARGUMENT

L-P's entire petition is premised on the alleged existence of a conflict among the circuits regarding the proper application of the Anti-Injunction Act. No such conflict exists. The cases cited by L-P stand for the unremarkable proposition that in different cases involving different facts, different circumstances, and different claims, federal courts may reach different results regarding whether or not the Anti-Injunction Act precludes the issuance of an injunction against state proceedings. Here, the statutory prohibition plainly applied, and neither of the two exceptions cited by the district court authorized the injunction that was issued. This case depends heavily on the specific provisions of Minnesota law, which provides, *inter alia*, that a party in Lester's position has its own claim—separate and independent from any claim of its customers—for repair costs that it may need to incur to restore its business and remedy the adverse business effects

suffered by reason of its distribution of a defective product like L-P's Inner-Seal siding.

Whatever L-P may have thought that it accomplished by cooperating with class counsel in arranging a settlement of the federal action in Oregon soon after it began, L-P could not possibly extinguish any portion of the claims of a non-party like Lester. Nor is that fact the least bit surprising or unfair. L-P's defective siding reduced Lester's once-successful business to a struggling entity, and L-P proposed simply to walk away, leaving Lester with no effective means of regaining its lost customer base. The Minnesota judgment merely compensates Lester for the harm that it suffered by reason of L-P's wrongdoing.

If L-P maintains that any portion of that judgment is inconsistent with Minnesota law, it has an adequate remedy in the Minnesota appellate courts. Indeed, the Minnesota Court of Appeals explicitly held that L-P now can appeal that portion of the judgment that the trial court delayed in entering as a result of the district court's injunction. Such an appeal—not a federal court injunction—is the proper means of addressing any alleged error of Minnesota law that the trial court may have committed.

This case turns on its particular facts and on the provisions of Minnesota law. No disagreement among the federal courts of appeals and no important issue regarding the interpretation of the Anti-Injunction Act is presented. Review in this Court is not warranted.

I. THE COURT OF APPEALS' DECISION DOES NOT CREATE A CONFLICT AMONG THE CIRCUITS.

A. The Court Of Appeals' Decision Does Not Conflict With *Baldwin-United.*

Principally, L-P claims that the court of appeals' decision conflicts with the Second Circuit's ruling in *In re Baldwin-United Corp.*, 770 F.2d 328 (2d Cir. 1985). There, state attorneys general, in their role as *parens patriae* for their citizens, filed notices of intent "to bring a suit seeking restitution for . . . citizens" of their states who had held annuities issued by the defendant. *See id.* at 332. The Second Circuit upheld an injunction against the attorneys general only after concluding that they were intending to sue solely as agents of their citizens, who were members of the plaintiff class in an earlier action: "[t]he states' objective . . . is to enforce state laws authorizing them in their *representative capacities* to seek restitution and monetary recovery from the defendants to be paid over to those . . . states' citizens . . . ." *Id.* at 332-33 (emphasis added).

The court of appeals' holding here does not conflict with *Baldwin-United.* First, as the court of appeals recognized, the parties in *Baldwin-United* admitted that the Anti-Injunction Act did not apply. Pet. App. 30a. L-P tries to ignore this fundamental distinction. It notes that *Baldwin-United* cited several Anti-Injunction Act cases. As the court of appeals here explained, however, "the Anti-Injunction Act was not at issue in *In re Baldwin-United*." Pet. App. 30a n.26. Although the *Baldwin-United* court "looked to caselaw interpreting the Anti-Injunction Act for guidance, it was not constrained by the strict requirements of the relitigation exception. We are not so unconstrained." Pet. App. 30a-31a n.26. As this Court stressed in *Atlantic Coast Line*, 398 U.S. at 287, the exceptions in the Anti-Injunction Act should not "be enlarged by loose statutory construction."

In any event, unlike the state attorneys general enjoined in *Baldwin-United*, Lester asserted its own claim for damages under Minnesota law, not a claim belonging to others. Lester did not assert any derivative claims. Lester is not a government representing its citizens or an "agent" representing class members. Thus, even under L-P's overbroad reading of *Baldwin-United*, there can be no conflict.

The testimony and evidence presented during the Minnesota trial make clear that Lester's recovery was for its own good, not as a surrogate for class members. Lester's business had been severely damaged as a result of the defective L-P Inner-Seal siding. The costs to repair the damaged Lester buildings are a measure of the harm incurred by Lester and what it might cost to restore Lester's reputation and business. Pet. App. 31a ("[a]ccording to the state trial court, however, the prayer for repair costs presented a cognizable state law claim belonging to Lester" and "Lester was not acting as a representative of its customers . . . ."). L-P's attempt to suggest a conflict with *Baldwin-United* disregards this fundamental point.

B. The Court Of Appeals' Decision Does Not Conflict With *Battle*.

L-P also claims that the court of appeals' ruling conflicts with *Battle v. Liberty National Life Insurance Co.*, 877 F.2d 877 (11th Cir. 1989). The district court there entered final judgment under a settlement agreement that settled claims arising from certain burial policies. *See id.* at 879. The court established two settlement classes: (1) owners of Alabama funeral homes from 1954 through 1977; and (2) all insureds with the identified burial policies. Five years after entry of the final judgment in the class action, the surviving family members of two burial policy-holders sued a funeral home, alleging a failure to comply with the terms of the burial policy. The Eleventh Circuit held that the district court prop-

erly enjoined the representatives of the class members from maintaining their state court action.[3]

There is no conflict between the decision below and *Battle*. The court of appeals here did not hold, as L-P suggests, that the entry of a final judgment in the class action, alone, precluded application of the "necessary in aid of jurisdiction" exception of the Anti-Injunction Act. Rather, the court ruled that "[b]ecause the state court action did not seriously impair the district court's flexibility and authority to decide the Inner-Seal Siding litigation or enforce the settlement agreement, an injunction was not necessary to preserve the court's jurisdiction." Pet. App. 23a. Moreover, the state court plaintiffs enjoined in *Battle* were *members of the class*, and their state court claims "on [their] face challenge[d] the propriety" of the district court's settlement of the class action. *See Battle*, 877 F.2d at 881. Here, Lester is not and was not a member of the Inner-Seal Settlement class. Pet. App. 7a, 82a. Lester's Minnesota action did not challenge the propriety of the Inner-Seal Settlement. Pet. App. 22a.

C. The Court Of Appeals' Decision Does Not Conflict With *IBT*.

L-P next asserts that the court of appeals' ruling conflicts with *United States v. International Brotherhood of Teamsters*, 907 F.2d 277 (2d Cir. 1990) ("*IBT*"). The government there filed a civil action against IBT and its General Executive Board alleging various racketeering actions in violation of federal law. Approximately nine months later, the district

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[3] The cases on which the Eleventh Circuit relied for the proposition that the district court can issue an injunction after entry of judgment involved state court actions that were direct challenges to the implementation of the federal judgment in the following settings: distribution of a settlement fund, federal court orders implementing a prior federal consent decree, and federal desegregation orders. This case does not involve any such situation.

court entered a consent decree embodying the settlement agreement among the parties to the litigation. After the consent decree was entered, certain members and local affiliates of IBT initiated litigation in other federal district courts challenging the actions of the officers appointed by the court pursuant to the consent decree. Citing the All Writs Act as authority, the district court enjoined all members and local affiliates of IBT from initiating any legal action challenging the court-appointed officers. The Second Circuit held that injunctions may issue under the All Writs Act against non-parties to prevent those non-parties from interfering with a district court's ability to implement a consent decree, even in cases in which a strict application of *res judicata* would not bar the subsequent action.

There is no conflict with *IBT*. First, *IBT* did not involve the Anti-Injunction Act. In *IBT*, the district court enjoined IBT members and local affiliates from taking legal action in other federal, not state, courts. The Anti-Injunction Act, therefore, was not applicable. Second, the district court was still implementing the consent decree at issue in *IBT* when multiple additional federal actions were initiated by IBT affiliates to challenge that implementation. Here, by contrast, the Inner-Seal Settlement was concluded more than four years before Lester initiated its Minnesota state court action and six years before L-P sought its injunction. As the court of appeals held, Lester was not a class member or a party to the Inner-Seal Settlement and "Lester did not seek to join or undo the class, contest the payment of funds to class members or make a claim on the settlement fund." Pet. App. 22a. The court of appeals' ruling, therefore, does not conflict with *IBT*.

D. The Court Of Appeals' Decision Does Not Conflict With *Diet Drugs*.

Continuing the parade of alleged conflicts, L-P also cites *In re Diet Drugs*, 282 F.3d 220 (3d Cir. 2002). That case involved an attempt by a Texas state court to issue an "inter-

locutory procedural ruling in a case pending before" a federal district court in Pennsylvania. *Id.* at 241. The Texas state court purported to order the federal court to recognize a mass opt out of actual class members from the federal action. It thus sought to make "determinations concerning the identity of the parties to a case" pending in the federal district court. *Id.* The federal district court refused to recognize the order that the state court attempted to enter in the federal proceeding. The court also enjoined counsel for the named plaintiffs in Texas from taking any action to effect the purported opt out. The Third Circuit affirmed. L-P argues that the court of appeals' ruling here conflicts with *Diet Drugs* because *Diet Drugs* held that a settlement in a complex class action is like a *res* over which the court can exercise continuing jurisdiction and control, even after the entry of a final settlement. L-P is incorrect.

First, in *Diet Drugs*, no settlement had been entered at the time the district court issued its injunction against plaintiffs' counsel, and thus, contrary to L-P's assertion, *Diet Drugs* does not stand for the proposition that a district court can enjoin a state court from proceeding by invoking the "in aid of jurisdiction" prong of the Anti-Injunction Act *after* the entry of final settlement of a class action. Second, as recognized by the court of appeals here, when the *Diet Drugs* court issued the injunction precluding counsel from fomenting "opt-outs," it relied on the fact that the settlement negotiations in the federal action were in their sensitive final stages and therefore the order of the Texas state court posed a serious threat to the district court's ability to manage the final stages of the complex litigation. Pet. App. 24a n.22. Here, by contrast, the Inner-Seal Settlement had been finalized six years before L-P sought its injunction. As the court of appeals observed, Lester did not seek to undo the class action settlement. Pet. App. 22a. Third, no one suggests that the Minnesota court tried to enter an order in the class action or tried to compel a federal court to do anything. Finally, in

Diet Drugs, the Third Circuit clearly held that the district court did not "review" the Texas state order, but rather merely refused to implement that order in the federal proceeding. Indeed, because the Texas opt out determination and the federal TRO were issued on the same day, the district court had not even seen the Texas court's order when it issued its original order. These facts are very different from the situation here, in which the district court reviewed the Minnesota court's opinion and the jury verdict and determined that the Minnesota judge was "wrong." Pet. App. 13a n.10. The court of appeals' opinion does not conflict with *Diet Drugs*.[4]

E. The Court Of Appeals' Decision Does Not Conflict With *Syngenta*.

L-P argues that the court of appeals' decision conflicts with this Court's holding in *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28 (2002). The sole issue decided by this Court in *Syngenta* was whether the All Writs Act provides a basis for jurisdiction to remove a state court action to federal

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[4] L-P also claims a conflict with *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196 (7th Cir. 1997). This contention is without merit. *Winkler* held only that the "necessary in aid of jurisdiction" exception should be construed to enable a federal court to enjoin a concurrent state proceeding that might render the federal court's jurisdiction "nugatory." *Id.* at 1202. That is not the situation here. The Minnesota state proceeding was not concurrent, and it did not in any way render the district court's final judgment in the class action "nugatory." Moreover, the Seventh Circuit in *Winkler* vacated the district court injunction under review, and held that the injunction exceeded the court's authority under the Anti-Injunction Act. In the court's words, "the district court has authority under the Anti-Injunction Act to enjoin only those persons (and their counsel) whose cases are presently part of federal multidistrict litigation, or who were properly part of such multidistrict litigation [in the past] . . . ." *Id.* at 1203. Here, of course, Lester was never a party to the federal class action in Oregon, and the decision in *Winkler* thus supports the impropriety of the district court's injunction.

court. The Eleventh Circuit held that the All Writs Act does not provide a basis for removal, and this Court affirmed. L-P erroneously contends that *Syngenta* held that parties like L-P, who are sued in a state court action that allegedly would undermine a federal settlement, should seek an injunction in the federal court that had retained jurisdiction over the settlement.

The court of appeals' decision here does not and cannot conflict with this Court's holding in *Syngenta*. The court of appeals' decision has nothing to do with whether the All Writs Act provides a basis for federal subject matter jurisdiction. Moreover, the statement that L-P claims was a "holding" in *Syngenta* actually was a comment in a footnote rejecting the notion that removal was "necessary" to protect a previous federal judgment. The Court observed that a party trying to enforce the terms of a settlement agreement previously approved in federal court could (1) apply to the court that approved the settlement for an injunction; or (2) seek a determination from the state court that the action is barred by the judgment of the district court in which the settlement was approved. L-P chose the second option—to make its argument in Minnesota state court. L-P cannot now go back and try the other option, against an entity that was *not a party* to any prior settlement. There is, in short, no conflict with *Syngenta*.

II. THIS CASE TURNS ON ISSUES OF MINNESOTA LAW.

A. Lester's Damages For The Cost To Repair The Defective Inner-Seal Siding Belong To Lester Under Minnesota Law.

L-P attempts to describe this matter as one of national importance. At its core, however, the case turns on the question of the remedies available under Minnesota law.

Lester, a distributor that sold L-P's defective Inner-Seal to its own customers, is entitled to recover under Minnesota law, as damages for L-P's fraud, breaches of warranty, and breach of contract: (1) the difference in the value of the product as accepted and as warranted, Minn. Stat. § 336.2-714; and (2) the cost to repair the defective product. *DeGidio v. Ace Eng'g Co.*, 225 N.W.2d 217, 233 (Minn. 1974); *Ag-Chem Equip. v. Ceram-Traz Corp.*, C9-95-2074, 1996 WL 229263, at *2-3 (May 7, 1996). As to the latter measure of damages, the Minnesota Supreme Court has made the legitimate policy decision that, even if such an award exposes the manufacturer to potential "double liability," the public interest favoring repair of defective products outweighs any potential risk that the customer will receive a windfall. *See DeGidio*, 225 N.W.2d at 223. Accordingly, at the trial in the Minnesota state court, Lester sought to recover all damages to which it was entitled under Minnesota law.

L-P chose to assert in the Minnesota state court that the Inner-Seal Settlement barred Lester's cost of repair damages. L-P first argued the issue in Minnesota in a motion for partial summary judgment. The Minnesota trial court, relying on *DeGidio* and *Ag-Chem*, denied L-P's motion. Specifically, the trial court held that Lester's cost of repair damages involved questions of fact that should be presented to the jury. Both L-P and Lester had the opportunity to present evidence at trial regarding Lester's damages. Lester presented extensive evidence, both through testimony and through documents, regarding its damages. L-P continued to argue during trial that it had honored its warranty to its customers through the Inner-Seal Settlement and that to the extent Lester had suffered damages to its business, they were the result of a "self-inflicted wound" because Lester had not itself funded the repairs of L-P's defective Inner-Seal siding.

The issue of whether Lester's damages were precluded by the Inner-Seal Settlement was presented to the jury in a special verdict form. The jury responded by awarding Lester

$13.2 million for cost of repairs. Pet. App. 11a. L-P, dissatisfied with the jury's determination that Lester's damages were personal to Lester under Minnesota law and not barred by the Inner-Seal Settlement, then turned to the district court for injunctive relief. To the extent L-P believes the jury erred under Minnesota law, it will have the opportunity to press those arguments in the Minnesota appellate system.[5]

B. The Availability Of Lester's Cost To Repair Damages Is An Issue Of Minnesota Law Properly Decided In The Minnesota Courts.

As the court of appeals correctly recognized, the district court impermissibly reviewed the Minnesota state court decision.[6] The court of appeals stated:

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[5] L-P claims that it "was unaware of Lester's plans to flaunt [sic] the Class Settlement and to seek repair costs for the very buildings covered by the settlement until an expert report that issued in June, 2002, two months before trial." Pet. 9 n.2. L-P's statement is difficult to believe because L-P had worked with Lester from 1996 through 1998 on a voluntary basis to repair approximately 90 buildings—without regard to the Inner-Seal Settlement. L-P had no basis to think that Lester would not seek its full recovery under Minnesota law for the defective Inner-Seal that Lester had sold as part of approximately 2,600 buildings. In any event, even if L-P had no idea of the scope of Lester's damages, L-P, by its own admission, had at least two months to decide whether to litigate the effect of the class settlement in Minnesota or to seek an injunction in the district court. L-P chose to assert the issue in Minnesota. After losing in Minnesota, L-P turned to the district court for injunctive relief. L-P claims that it "appropriately balanced" the Minnesota courts and the federal court; this is a lawyer's euphemism for having one's cake and eating it too.

[6] In its opinion issuing the injunction, the district court stated "I have studied [*DeGidio* and *Ag-Chem*] carefully and find them to be readily distinguishable and thus not controlling. . . . Consequently I find and therefore conclude that the Minnesota jury verdict wrongly includes damages expressly encompassed in and precluded by the nationwide class action settlement." Pet. App. 83a. Essentially, the district court concluded that the "judge in Minnesota . . . did wrong." Pet. App. 13a n.10.

> Whether Lester had adequately proven its claims presented a question of fact, however. The trial court left it to the jury, as the finder of fact, to assess damages according to detailed instructions. It is not the province of the district court in Oregon to say that the trial court and jury in Minnesota were wrong in their respective determinations. The proper recourse for L-P was to appeal through the state court system and, if necessary, to petition the United States Supreme Court for review. "[L]ower federal courts possess no power whatever to sit in direct review of state court decisions."

Pet. App. 33a (citations omitted). The court of appeals also correctly ruled that Lester's claims were personal to Lester and could not have been released by the class settlement. The court of appeals stated:

> Because the repair cost claim sought recovery of Lester's damages, albeit voluntary and future damages, Lester was not acting as a representative of its customers seeking to recover on behalf of its customers. The claim was instead entirely personal to Lester. That claim could not have been resolved in the class action together with the class claims because Lester was neither a party to the class action nor represented by a party to the class action. Because Lester did not have a "full and fair opportunity" to litigate its repair costs claim in the class action, that claim was not adjudicated and released by the class settlement. With an essential element of the relitigation exception lacking, the district court had no authority to enter the injunction.

Pet. App. 31a-32a (citations omitted).

The issue of whether the Inner-Seal Settlement barred Lester's cost of repair damages under Minnesota law was determined and rejected by a Minnesota jury in a Minnesota trial. L-P can present the issue to the Minnesota appellate courts. It does not warrant review here.

III. THE CLASS ACTION FAIRNESS ACT DOES NOT ALTER THE INTERPRETATION OF THE ANTI-INJUNCTION ACT.

In the final paragraph of the petition, L-P suggests that the enactment of the Class Action Fairness Act, Pub. L. No. 109-2, 118 Stat. 4 (2005), somehow "magnifie[s]" the "uncertainty created by the decision below." Pet. 21. Nothing in the Class Action Fairness Act purports to modify or affect the proper interpretation of the Anti-Injunction Act. To the extent class or "mass" actions previously litigated in state court will now be litigated in federal court, the Class Action Fairness Act may actually reduce the circumstances that implicate the comity concerns of the Anti-Injunction Act; if an action sought to be enjoined is in federal court rather than state court, the Anti-Injunction Act will not apply. In any event, the Class Action Fairness Act will not increase the number of cases in which litigants framing class action settlements may wish to take account of potential claims by non-class-members under federal or state law.

IV. THE PETITION ALSO SHOULD BE DENIED BECAUSE THE INJUNCTION WAS IMPROPER FOR ADDITIONAL REASONS NOT REACHED BY THE COURT OF APPEALS.

In addition to the Anti-Injunction Act, Lester presented in the court of appeals a number of additional bases for vacating the injunction, as set forth in the Statement of the Case, Section E, *supra*. Because the court of appeals found that the injunction violated the Anti-Injunction Act, it did not reach many of these additional grounds. Pet. App. 18a n.15. Taken alone, each of these arguments provides sufficient grounds for vacating the injunction. Taken together, they demonstrate the extent to which the injunction so clearly and improperly intrudes upon Minnesota's ability to administer its judicial system and resolve conflicts. The court of appeals properly recognized that the Minnesota state court should be permitted

to resolve issues of state law for itself. Pet. App. 34a-35a n.28. Given the various alternative grounds on which the injunction could have been vacated, review of L-P's petition addressing the Anti-Injunction Act is neither necessary nor warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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